Pocket Tax Guide

Real estate investment in Vietnam

Shape the future with confidence

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1 At a glance

- Real estate business is a conditional investment sector which has certain restrictions to foreign investors. However, most of main real estate businesses (including residential, commercial as well as industrial property businesses) are open to 100% foreign ownership and the restrictions on foreign-invested projects are not very significant vis-à-vis local developers.
- Foreign invested enterprises may have leasehold land use rights (LUR) or land lease rights (LLR) up to 50 years or 70 years (for special cases) which is renewable.
- Investments can be made under the forms of limited liability company (LLC), joint stock company (JSC) or business cooperation contract (BCC) which does not create a legal entity. It is typical for a foreign investor to partner with a local company who owns land for development purposes.
- For real estate company establishment, project owner's equity is required to be at least 15% or 20% (depending on project land area used) of the total project development costs.
- Real estate businesses are subject to management of various authorities such as people's committee (land-related matters); department of finance (project and corporate approvals), department of constructions (master plan, construction permit and sale approvals, etc.).

Tax on corporate income and gains

Tax rates

The standard corporate income tax (CIT) rate is 20%.

Tax incentives

Tax incentives including reduced rates and tax exemption or reduction periods are available in limited cases, mostly industrial property investments in qualified areas.

Determination of taxable income

General

Taxable income is determined based on financial statements, subject to various tax adjustments (mostly non-deductible expenses).

Expenses are subject to business-purpose test and must be supported by proper documentation (e.g. invoices recognized by the tax office, evidence of cashless payments, etc.).

CIT regulations provide a specific list of non-deductible expenses which is not exhaustive and often subject to varying interpretation.

There are specific rules governing the determination of taxable income for real estate companies, such as allocation of development cost for infrastructure and common areas, timing for revenue recognition, etc.

Deductibility of interest

Net interest expense is deductible up to 30% of earnings before interest, taxes, depreciation and amortization (EBITDA) under transfer pricing rules, unless capitalized as part of the cost of property. Excess interest expense may be carried forward consecutively for up to five years.

Depreciation

For real properties used for the production and business activity, depreciation is minimum 2% per annum. LUR pay is amortized in accordance with the LUR term. Long-term LLR paid in lump-sum are allocated to expenses over the lease period or fully charged to the annual profit or loss if paid on a yearly basis.

For mixed-used projects, cost attributed to held-for-lease properties is depreciable.

Capital gains

Gains derived by a Vietnamese transferor from the sale of shares or transfer of capital interests are subject to CIT at 20%. A foreign transferor is generally taxed at 2% of gross transfer proceeds, unless the transaction qualifies as an internal restructuring.

Transfer of real property

A transfer of the entire capital interest in a single-member limited liability company that owns real property is regarded as a transfer of real property.

Dividends

Dividend remittances overseas are not subject to withholding tax.

Withholding taxes on interest and royalties

Generally, a 5% withholding tax is imposed on interest paid to an offshore lender (including shareholder loans). A withholding tax at a rate of 15% is imposed on royalties paid to foreign entities.

Relief for losses

Enterprises that incur losses from sales of real properties may carry forward the losses fully and consecutively for a maximum of five years (including the year of a tax holiday). The losses are claimed as deductions from taxable income.

Losses from sales of real properties or sales of real estate project are not allowed to offset against profits from incentivized activities for CIT purposes.

Groups of companies

The offsetting of losses and profits between parents and subsidiaries is not allowed.

Tax treaties

Vietnam has signed tax treaties with 80 countries that provide relief from double taxation.

3 Other taxes

Stamp duty

Stamp duty on ownership registration of property is 0.5%, capped at VND500 million/ asset. No stamp duty is levied on capital assignment.

Non-agricultural land use tax

Taxable objects include residential land in all areas and land use for business purposes, except for certain cases. Non-agricultural land used for business purposes is levied at 0.03% per annum on taxable value.

Value added tax (VAT)

The sale and lease of real estates are subject to VAT at 10%. The transfer of LUR (excluding infrastructure or construction values) is especially exempt from VAT.

LLR/LUR payment

This is payment on a lump-sum or yearly basis for the use of land.

Foreign contractor tax

Deemed withholding rates depend on type of business activity (from 0.1% to 15%). Tax is normally withheld at source.

Import duties

Import duty is imposed based on harmonized system (HS) code of goods imported into Vietnam. Import duty rate are classified into: ordinary rates, preferential rates, and special preferential rates under various free trade agreements.

Social insurance, health insurance and un-employment insurance contributions

The statutory contribution rates for employers and employees are 21.5% and 10.5% respectively based on the salary or wage stated in the labour contract. Most contributions are subject to a cap based on minimum salary levels.

Personal income tax (PIT)

Transfers of real estate by individuals are taxed at deemed 2% rate on transaction values.

Transfer of shares in a private JSC by individuals is subject to tax at 0.1% on transaction values.

Employment income is taxed at progressive rates from 5% to 35% on residents (after certain deductions) and flat rate of 20% for non-residents.

Transfer pricing

The Vietnamese transfer pricing regulations apply arm's length principle to determine transfer prices of business transactions undertaken between related parties. The transfer pricing methods permissible under the regulation closely resemble the methods provided by the Organization for Economic Cooperation and Development (OECD) Transfer Pricing Guidelines. The Vietnamese regulations contain detailed transfer pricing documentation (TPD) requirements. The documentation must be prepared to substantiate the arm's length prices and submitted to the tax authority within a prescribed time limit upon receipt of written request.

4 Typical tax issues in real estate sector

We set out below certain tax issues that are common in the real estate sector in Vietnam. Generally there are solutions to address such issues.

- Acquisition cost may be much higher than book value of the project under the project company, of which only the latter is tax deductible to determine taxable income of the project company.
- Dividend distributions are only allowed once the companies are profitable with no accumulated loss. This may result in cash trapped in the companies and requires advance planning on cash repatriation.
- Shareholder loan financing is subject to various restrictions. For example, Law on Residential Housing does not allow shareholder's loans for residential projects, the deductibility of interest expense is limited to 30% of EBITDA, the Law on Real Estate Business requires a minimum owner's equity of 15% or 20% of total development cost, etc.
- Total value of buildings may be subject to a single low depreciation rate unless proper cost segregation is prepared to accelerate depreciation of certain components.
- Land compensation costs are generally subject to compensation plans by local governments, therefore actual compensation in excess of approved amounts (which are quite common to speed up land clearance process) may not be tax-deductible.
- Offshore indirect transfers of shares in Vietnam's properties companies can be taxable.

We strongly recommend investors to consider the above matters at the early stage of investment decision, otherwise it would be more difficult and/or costly to rectify these issues once the project has progressed.

5 Miscellaneous matters

Foreign-exchange controls

Enterprises with foreign-owned capital must open accounts denominated in a foreign currency or the Vietnamese dong (VND) at a bank located in Vietnam and approved by the State Bank of Vietnam (SBV). All foreign-exchange transactions, such as payments or overseas remittances, must be in accordance with policies set by the SBV.

Enterprises with foreign-owned capital and foreign parties may purchase foreign exchange from a commercial bank to meet the requirements of current transactions or other permitted transactions, subject to the bank's availability of foreign exchange.

Tax audit

Tax audit is performed on annual basis or ad-hoc basis. Any under-declared tax identified by tax auditor shall be penalized at 20% of the tax shortfalls (or 100%-300% if considered as tax evasion) and subject to late payment interest at 0.03% per overdue day (approximately 11% per annum) calculated from the statutory deadline to the date of actual payment.

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